REDSKY IT

TERMS AND CONDITIONS

RedSky IT Ltd, Breakspear Park, Breakspear Way, Hemel Hempstead HP2 4TZ
Switchboard: 020 3002 8600 **Fax:** 020 3073 9780 **Website:** www.redskyit.com

This contract forms the **Agreement** between RedSky IT (Hemel) Limited, company number 01223977, whose registered office is Breakspear Park, Breakspear Way, Hemel Hempstead, HP2 4TZ (**RedSky IT**) and of , company number whose registered office is at (the **Client**) for, as relevant, the supply, licence and support of software products, related equipment and the provision of system, development, managed and other IT services, by RedSky IT to the Client.

This Agreement shall come into effect from the date of signature and apply to the exclusion of any other terms and conditions including any which the Client may attempt to introduce by way of purchase order or otherwise.

1. DEFINITIONS

In this Agreement, the following expressions will have the following meanings, unless inconsistent with the context:-

ADR Notice	has the meaning given in clause 18.3
ALF	the annual licence fee payable for the right to use the Software, and which may incorporate updates and associated Software support in accordance with the terms of this Agreement, in the amount set out in the Schedule
Associated Company	as defined in section 256 of the Companies Act 2006
Business Day	any day which is not a Saturday or Sunday nor is a public holiday in England and Wales
Business Hours	9.00am to 5.30pm on each Business Day
Client Data	all data and information input into the Software by the Client or on its behalf but excluding all information contained within the Software
Confidential Information	has the meaning given in clause 7
Deposit	the non-refundable amount stated in the Schedule payable on the date of this Agreement
Dispute	has the meaning given in clause 18.1
Effective Date	the date of signature of this Agreement by both parties
Fees	the amount stated in the Schedule being the ILF, ALF and any amount in respect of the Goods or otherwise due under the Agreement and payable by the Client to RedSky IT under the terms of this Agreement
Goods	includes all items supplied to the Client to which title passes to the Client under the terms of this Agreement, including hardware but excluding Software and Third Party Software
ILF	initial licence fee being the value of the initial fee payable to install the Software, as set out in the Schedule
Installation	delivery of goods to the Client site and commissioning of goods, this may include demonstration of Software loaded, if requested by the Client
Intellectual Property Rights/IPR	patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in set-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world
Licence	the Licence granted in clause 9
Personal Data	has the meaning given to it under the Data Protection Act 2018.
Renewal Period	has the meaning given in Clause 2.1

Software	the proprietary software products of RedSky IT and identified in the Schedule including any modifications that may be agreed
Term	has the meaning given in Clause 2.1
Third Party Additional Terms	Contractual terms issued by the provider of Third Party Software acceptance of which is a condition of use by the Client of the Third Party Software
Third Party Software	the proprietary software products of a third party, other than RedSky IT, and supplied under the Agreement to the Client, as identified in the Schedule.

2. TERM OF THE AGREEMENT

2.1. This Agreement shall, unless otherwise terminated in accordance with the Agreement, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of twelve (12) months (each a **Renewal Period**), unless:

2.1.1. Either party notifies the other of termination, in writing, at least three (3) months before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

2.1.2. otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the Term.

2.2. The Client shall not be entitled to any compensation if the Agreement is terminated in accordance with Clause 2.1.

3. REDSKY IT GENERAL OBLIGATIONS

3.1. RedSky IT will perform the Agreement using all reasonable skill and care.

4. CLIENTS GENERAL OBLIGATIONS

4.1. Prior to installation of the Software, the Client shall ensure that its infrastructure meets the minimum requirements for the Software.

4.2. The Client shall promptly, at its own cost, provide to RedSky IT such information, materials and assistance as RedSky IT may reasonably require in order to perform its obligations under the Agreement.

4.3. Where RedSky IT is to perform any activity at a Client location, the Client shall provide without charge suitable safe office accommodation, materials, equipment and support services (including use of telephone and IT systems and internet services).

4.4. The Client shall procure all necessary rights from third parties (including intellectual property) for RedSky IT to be able to perform its obligations under the Agreement in accordance with all laws, IPRs and relevant and necessary consents.

4.5. The Client warrants that all Client Data and materials will be accurate and complete, and it shall not knowingly include material which is illegal or otherwise unlawful or in breach of any codes of practice or ethics.

4.6. The Client acknowledges and agrees that it shall be data controller of all Personal Data that is processed by it within the Software environment licensed by RedSky IT. The parties agree that RedSky IT shall be data processor only in respect of the data identified within RedSky IT's data processing policy, a copy of which is at: https://www.redskyit.com/dp2020-09. The Client agrees to be bound by the RedSky IT data processing policy which may only be amended by mutual agreement of the parties.

4.7. The Client shall ensure that:

4.7.1. it makes periodic backups, and tests to ensure completeness and usability;

4.7.2. it makes backups for year-end or other key accounting events;

4.7.3. it stores backups securely and at multiple locations;

4.7.4. it maintains all control accounts and reconciles them on a monthly basis;

4.7.5. it only permits fully trained operators to use the Software;

4.7.6. it notifies its employees, agents and other parties who will use the Software of the Licence granted under this Agreement and that they accept its terms prior to use;

4.7.7. it provides a written report to RedSky IT within seven (7) days of first becoming aware of any Software error or unreliability;

4.7.8. it does not continue to use any defective or related part of the Software once a defect has become apparent and until the defect has been rectified.

4.7.9. RedSky IT shall have no liability for any loss of data (including but not limited to Client Data) or other information in any circumstances. In addition, and without prejudice to the forgoing, it shall be the Client's responsibility to implement security measures including regular and appropriate backups of Client Data, in order to secure and protect its Client Data.

4.8. In the event that the Client fails to comply with its obligations under clause 4.77, any additional time and/or cost incurred by RedSky IT in performing its obligations under the Contract or in responding to a specific request for assistance from the Client shall entitle RedSky IT to charge for its time on the basis of its standard hourly/day rates.

4.9. Any warranties given in this Agreement with regard to the performance of the Software will also not apply in the event of:

4.9.1. any breach by the Client of clause 4.77; or

4.9.2. a failure by the Client to comply with clauses 4.1010, 9.4 or 9.9;

4.9.3. a failure of the Client to follow RedSky IT's instructions in relation to implementation or set up of the Software including but not limited to a breach by the Client of clause 4.1; and

4.9.4. use by the Client or its employees, agents and subcontractors of the Software otherwise than in accordance with this Agreement.

4.10. The Client may not:

4.10.1. alter, modify, adapt or translate the whole or any part of the program listings, object and source program listings, object code or source code in the Software in any way whatsoever;

4.10.2. permit the whole or any part of the Software to be combined with or become incorporated in any other computer programs; or

4.10.3. decompile, disassemble or reverse engineer the Software;

4.10.4. attempt to write direct to the databases, by bypassing the Software;

4.10.5. make the Software available in whole or in part (including program listings, object and source program listings, object code and source code) in any form to any person (other than its customer and its and their employees who have agreed to use the Software only in accordance with this Agreement) without prior written consent of RedSky IT, nor attempt to do any of these things.

4.11. During the terms of the Agreement, the Client may make only such back-up copies of the Software as are reasonably necessary for lawful operational use and security and must maintain written records of the number and location of all back-up copies of

the Software (each of which shall clearly identify that copyright and ownership of IPR in the copies shall remain with RedSky IT). The Client shall supply such records to RedSky IT on request. On termination of the Agreement the Client shall, at the request of RedSky IT return or destroy all copies of the Software and certify that to RedSky IT that this has been done.

5. PAYMENT TERMS

5.1. All Fees shall be due and payable in accordance with the Schedule, and, where the Schedule is silent, in accordance with this Clause 5 of the Agreement.

5.2. In addition, unless there is a conflict between the body of this Agreement and the Schedule (in which case the Schedule shall take precedence) the body of this Agreement shall also apply to all Fees due and payable and all payments made.

5.3. The Deposit is payable in accordance with the Schedule and is, in all circumstances, non-refundable.

5.4. Grant of the Licence (and use of the Software by the Client) is conditional upon payment of the Fees in accordance with the Schedule and this Agreement, which shall, in all circumstances include

5.4.1. the ILF (relating to issue of the Software), and

5.4.2. the ALF (being the annual fee payable annually for every Renewal Period). The ALF is payable annually in advance in accordance with the terms of this Agreement (or annually advance on such other date as the parties shall agree in writing, signed by both parties and appended to this Agreement), but without prejudice to the requirement to pay annually in advance, accrues from day to day. No refund of any ALF paid in advance shall be made, for any reason.

5.5. Invoices issued by RedSky IT are payable on standard credit terms of fourteen (14) days from date of invoice except where payment is conditional upon the performance of specified contractual terms, in which case payment is due upon performance.

5.6. Invoices in respect of the ALF are issued forty five (45) days in advance of Renewal Period and are payable within thirty (30) days.

5.7. All sums under this Agreement are exclusive of VAT or any other sales tax which may be applied from time to time (which shall be payable at the current rate) and any other sales or similar taxes, customs duties or charges, for which the Client shall be responsible. The Client shall indemnify RedSky IT against any liability (including interest, penalties or costs incurred) which is levied, demanded or assessed on RedSky IT at any time in respect of the Client's failure to account for or to pay any VAT-related payments made to the Client under this Agreement.

5.8. The Fees are exclusive of reasonable travelling expenses to and from the Client location(s) which will be payable by the Client at the rate set out in the Schedule, invoiced once incurred in accordance with the provisions of this Agreement.

5.9. If the Client fails to make any payment due to RedSky IT under this Agreement by the due date for payment (due date), then, without prejudice to any right or remedy available and accruing to RedSky IT under this Agreement or in law, the Client shall pay interest on the overdue amount at the rate prescribed under Late Payment of Commercial Debts (Interest) Act 1988 rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

5.10. RedSky IT may by such means as it chooses prevent further use of the Software by the Client if the Client fails to pay all or any part of the Fees within six (6) weeks of the due date for payment of those Fees. To the extent that RedSky IT exercise such right RedSky IT shall deliver written notice to the Client no less than 48 hours before exercising such right.

5.11. All invoices shall be deemed correct and approved unless either manifest clerical error have been made or the Client sends written notice making a bona fide complaint within fourteen (14) days of the invoice date specifying why the invoice is inconsistent with the provisions of this Agreement and providing sufficient supporting evidence to enable RedSky IT to consider the issue raised.

5.12. Time is of the essence in respect of payment of all amounts payable under this Agreement.

5.13. All amounts payable under this Agreement will be paid in full without set-off, deduction or counterclaim by the due date.

5.14. If the Client is prevented from further use of the Software by Redsky IT under clause 5.10 (or if the client so requests), RedSky IT will, at the written request of the Client, provide a quote (priced at Redsky IT's sole discretion) for the following services, which will be delivered by Redsky IT upon payment in full in advance by the Client of the amount quoted:

5.14.1. Provision of a copy of the stored data held within the licenced Software environment, constituting a complete copy of the transactional data to the Client or their duly appointed representatives. The copy of the stored data can be exported to a third-party database for further processing;

5.14.2. Grant of a new software licence containing the same restrictions as Sub-clauses 9.3, 9.4 and Sub-clauses 9.7 to 9.10 and subject to these Term and Conditions, using the data within the former structure to be provided with either read only or ongoing processing capability. The provision of such licence will be subject to payment of a fee based upon users and length of duration. Supply will be subject to written approval by the client's owners or representatives.

6. DELIVERY

6.1. The Client will notify RedSky IT in writing of damage to Goods received within three (3) days of the date of delivery.

6.2. Claims for non-delivery must be notified in writing to RedSky IT within seven (7) days of receipt of a delivery note or invoice, whichever arrives earlier.

6.3. RedSky IT is not responsible for any issues or defects in Software or equipment caused by failures of equipment, if said equipment is not supplied by RedSky IT. RedSky IT will be entitled to recover any expense in diagnosing or remedying such failures at the prevailing rates.

6.4. Dates or times quoted by RedSky IT for delivery of Goods or installation or performance of any contractual obligations is given in good faith as a reasonable estimate but time shall not be of the essence of this Agreement for the performance of any such obligations.

7. CONFIDENTIAL INFORMATION

7.1. All information which RedSky IT may have imparted or may from time to time impart to the Client, its employees, officers, sub-contractors or agents in connection with this Agreement and its business affairs is proprietary and confidential to RedSky IT and shall be Confidential Information for the purposes of this Agreement.

7.2. Each party will (unless contrary to law):

7.2.1. keep confidential all information obtained from the other under or in connection with this Agreement;

7.2.2. not disclose any Confidential Information to a third party without prior written consent of the other except to persons to the extent strictly necessary for the performance of this Agreement; and

7.2.3. not use any Confidential Information otherwise than for the purposes of this Agreement.

7.3. Each party will take all necessary precautions to ensure that Confidential Information:

7.3.1. is given to its employees or sub-contractors or third parties only to the extent necessary for those persons' activities in connection with the performance of this Agreement and that they are made aware of the confidentiality of the Confidential Information and shall comply with the provisions of this clause 7 and the party in receipt of the Confidential Information shall remain responsible for the actions of those persons under this clause; and

7.3.2. is treated as confidential and not disclosed (without prior approval) or used by any person otherwise than for the purposes of this Agreement.

7.4. The provisions of clauses 7.1 and 7.2 do not apply to Confidential Information to the extent it:

7.4.1. is or subsequently becomes public knowledge (otherwise than by direct or indirect breach of this clause);

7.4.2. was in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party;

7.4.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

7.4.4. the parties agree in writing that it is not confidential.

7.5. Nothing in this clause 7 prevents either party from disclosing Confidential Information for a proper purpose to

7.5.1. a public authority or regulatory body, or to a court of law or

7.5.2. its senior management, auditors, bankers, lawyers or other professional advisers, provided always that the recipient agrees to be bound by obligation of confidentiality substantially similar to those set out in this clause 7.

7.6. Nothing in this clause 7 prevents either party from using any techniques, ideas or know how gained during the performance of this Agreement in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information belonging to the other party or an infringement of the IPRs of the other party.

7.7. The provisions of this clause 7 will continue to apply notwithstanding termination of this Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. All IPRs in the Software and Third Party Software belong to and will remain at all times with RedSky IT or the third party proprietor as appropriate.

8.2. The Client shall not during or at any time after the termination of this Agreement in any way question or dispute the ownership of the IPRs in the Software or any other such rights of RedSky IT.

8.3. Upon the termination of this Agreement, the Client shall discontinue use of the Software and related documentation and will delete, destroy or otherwise make permanently unusable the Software and all whole or partial copies of the Software within the Client's control or possession, without receipt of compensation for such discontinuance.

8.4. Permission by RedSky IT for the Client to retain one full copy of the Software and related documentation for disaster recovery, audit/archive purposes only will not be unreasonably withheld. The Client shall, if such permission is required, apply to RedSky IT in writing and in granting such permission RedSky IT will have the right to impose such reasonable conditions, fees and charges as are appropriate to the circumstances.

8.5. The Client acknowledges that no Intellectual Property Rights in or relating to any product or materials created or developed by RedSky IT in connection with this Agreement will transfer or be assigned to the Client unless RedSky IT and the Client have signed a written assignment document to that effect. Instead, such rights shall belong exclusively to RedSky IT and RedSky IT shall license them to the Client under this Agreement, for the term of the Agreement, on the same basis as the Software. Bespoke software created for the Client under this Agreement will be deemed to be part of the Software and will be integrated into the RedSky IT Software. In all circumstances, and irrespective of whether the Client has paid for such development and bespoke Software, all IPRs in bespoke Software shall belong to RedSky IT.

8.6. The Client will indemnify and keep RedSky IT indemnified in full, from and against all costs (including costs of enforcement), expenses, liabilities (including tax liability), injuries, losses, damages, claims, demands, legal costs (on a full indemnity basis) and judgments which RedSky IT incurs or suffers as a consequence of infringement of any IPR of a third party arising directly or indirectly from:

8.6.1. the provision by RedSky IT of equipment, software and/or services following or otherwise making use of information or specifications supplied by the Client;

8.6.2. the Client's failure to procure necessary rights from third parties (including licences of IPRs in relation to computer software) from time to time required by RedSky IT in order for RedSky IT to legally perform its obligations under this Agreement; or

8.6.3. the use by RedSky IT of the Client Data or any materials originating from the Client.

9. THE LICENCE

9.1. Subject to the terms of this Agreement and in consideration of the payment to RedSky IT by the Client of the Fees by the due date for the relevant Fee, RedSky IT grants to the Client a non-exclusive and non-transferable licence to use the Software in the specified locations for the term of the Agreement subject always to payment of the ALF.

9.2. In consideration of payment by the Client of the Fees relating to the Licence, RedSky IT will:

9.2.1. supply to the Client one copy of the Software in object code form

9.2.2. supply any user documentation provided to RedSky IT in respect of Third Party Software.

9.3. The Client may only use the Software at the specified location(s) and for its own internal business uses and then subject to any specific user restrictions identified in the Schedule. The Client shall not, without the prior written consent of RedSky IT, permit any third party to use the Software and will not use the Software on behalf of or for the benefit of any third party (including any Associated Company) in any way whatsoever (including for the purposes of operating a bureau service).

9.4. The Client shall not access, store, distribute or transmit any viruses, malware or any material during the course of its use of the Software that:

9.4.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

9.4.2. facilitates illegal activity;

9.4.3. depicts sexually explicit images;

9.4.4. promotes unlawful violence;

9.4.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

9.4.6. is otherwise illegal or causes damage or injury to any person or property;

and RedSky IT reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to the Software if the Client breaches the provisions of this clause.

9.5. Acceptance of the Software will occur upon installation of the Software on the Client's server.

9.6. If any or all of the Software is bespoke in nature the details of this will be set out in the Schedule and the following terms shall apply.

9.6.1. The Client shall, within fourteen (14) days of receipt of bespoke Software, conduct such tests as are necessary to ensure that it works in accordance with the agreed specification, and will give RedSky IT notification, in writing, of any defects which the Client believes exists in the bespoke Software which prevent it from performing in accordance with the specification. In the event that the bespoke Software does not materially comply with the agreed specification, RedSky IT shall modify the bespoke Software to ensure that it does, and the Client shall repeat the tests as are necessary to demonstrate such compliance.

9.6.2. The bespoke Software shall be deemed to have been fully accepted by the Client if either RedSky IT does not receive notice of defects in writing within the fourteen (14) day period or the Client uses the bespoke Software in a live environment.

9.6.3. Where the development costs (which shall be calculated by reference to the total time costs incurred by RedSky IT staff at their prevailing hourly rates) for the bespoke Software exceed the sum of £5,000.00 (Five Thousand pounds only), an ALF calculated in the first year, as 20% of the total development costs will be charged. In subsequent years the ALF will be indexed by the same rate as is applied to the overall ALF in accordance with clause 9.11 below.

9.7. The Client will use the Software as set up, limited to the number of users and at the Client locations. The use of the Software on different equipment, or at a different location requires the prior written consent of RedSky IT and RedSky IT reserves the right to charge additional Fees in such circumstances. The Client shall, on an annual basis and more frequently at RedSky IT's request, provide to RedSky IT a list of users of the Software and locations of those users.

9.8. If the Software cannot be used because the Client's equipment becomes temporarily inoperable, the Licence is deemed to apply to the use of the Software on alternative equipment which has the same technical specification without additional payment to RedSky IT but at the Client's risk and expense, until either the equipment becomes operable or the expiry of three months, whichever comes first. Continued use after this period shall incur additional Fees.

9.9. The Client shall not attempt to copy, adapt, modify, decompile, disassemble, reverse engineer, make error corrections or create any derivative work(s) based on the Software, related written material or documentation or except as stated in this Agreement or with the prior written consent of RedSky IT. The Client will be permitted to observe, study or test the functionality of the Software provided such actions are carried out in accordance with the terms of this Agreement.

9.10. The Client shall follow all reasonable instructions given by RedSky IT from time to time with regard to the use of the Software.

9.11. On the anniversary of the date of this Agreement and each subsequent renewal RedSky IT shall be entitled to increase any ALF by a reasonable percentage (of up to 10%), without the need to notify the Client. This percentage will be based on underlying economic inflation figures and take account of the Client's use of the support services for purposes other than general support.

9.12. RedSky shall provide telephone support to the Client for breach of the warranty given under clause 13, and at the Client's cost, for all other queries and support in relation to the Software provided always that all ALF that are due and payable for the relevant period have been paid by the Client in accordance with this Agreement. Where support is at the Client's costs, RedSky IT shall charge for its time on the basis of its standard hourly/day rates (a current copy of which can be obtained from RedSky IT upon written request, and which shall be updated by RedSkyIT in its sole discretion from time to time).

9.13. RedSky IT reserves the right to withdraw support until such time as any overdue invoices are paid in full. No refund for any period where support is withheld for this reason will be available.

9.14. RedSky IT undertakes to issue standard updated versions of the Software incorporating changes in statutory requirements and/or error corrections and/or improvements.

9.15. RedSky IT will be the sole arbiter of the number, content and release date of the Software update.

9.16. RedSky IT reserves the right to charge an additional fee for any and/or each such update necessary due to any reason out of the control of the parties (including but not limited to changes in legislation, industry standards, accounting standards) which requires a significant level of programming resource.

9.17. RedSky IT reserves the right to charge for statutory changes and improvements to the Software.

9.18. The Software is initially licensed to the number of users in the agreed licensed multiples specified in the Schedule. The Client may later license additional users in the licensed multiples specified in the Schedule at the licence fee rates then prevailing. The Client may, subject to clause 16.5, reduce the number of licensed users by terminating one or more of the existing licensed multiples or by terminating all the licences and relicensing a smaller number and, in the latter case, an ILF and ALF will be payable in relation to the new licence. Where the Client reduces the number of users, no refund of Fees already paid, or due and payable, will be given.

10. THIRD PARTY SOFTWARE

10.1. The Third Party Software shall be deemed to be incorporated within the Software for the purposes of this Licence (except where expressly provided to the contrary) and use of the Third Party Software shall be subject to the Third Party Additional

Terms.

10.2. Third Party Software and hardware are supplied on the basis that the Client accepts the relevant Third Party Additional Terms and/or associated terms, conditions or warranties. Any documentation received by RedSky IT shall be provided to the Client at the time of delivery and it is the Client's responsibility to understand and accept such terms.

10.3. In respect of Third Party Software, RedSky IT shall pass on to the Client the benefit of any warranty given by the Third Party Software proprietor, but will have no other responsibility in respect of such software.

10.4. RedSky IT will act as the Client's agent to install Third Party Software on its behalf and the Client authorises RedSky IT to accept any licence conditions required to install such equipment on its behalf.

10.5. The Client shall indemnify and hold RedSky IT harmless without limit against any loss or damage which it may suffer or incur as a result of the Client's breach of any Third Party Additional Terms howsoever arising.

10.6. RedSky IT may treat the Client's breach of any Third Party Additional Terms as a breach of this Agreement.

11. INDEMNITY

11.1. RedSky IT will indemnify the Client against any claim that the use or possession of Software in accordance with this Agreement infringes the IPRs of any third party, provided that the Client:

11.1.1. allows RedSky IT to conduct all negotiations and proceedings in relation to the claim;

11.1.2. does not prejudice RedSky IT defence of such claim and does not, without RedSky IT's written consent, make any admission in relation to the claim or attempt to settle it; and

11.1.3. gives RedSky IT all reasonable assistance in connection with such claim.

11.2. The indemnity in clause 11.1 shall not apply to any IPR claim in respect of and to the extent that:

11.2.1. the Client uses the Software in combination with systems or equipment other than that defined by this Agreement;

11.2.2. the Client uses the Software in breach of this Agreement, or in a manner not reasonably to be inferred from the specification or requirements of the relevant materials to be provided pursuant to the terms of this Agreement gives rise to the claim; or

11.2.3. any modification carried out by or on behalf of the Client to any item supplied by RedSky IT under this Agreement, if such modification is not authorised by RedSky IT in writing, gives rise to the claim.

11.3. RedSky IT may (at its option) in the event of such a claim:

11.3.1. procure the right to continue using the Software or any infringing part of the same;

11.3.2. modify or amend the Software or any infringing part of the same so that it becomes non-infringing;

11.3.3. replace the Software or any infringing part of the same with other software of similar capability; or

11.3.4. refund an equitable proportion of any Fees relating to licences;

provided that exercise of any of the options referred to in clauses 11.3.1 to 11.3.3 will operate as an entire discharge of the liability of RedSky IT to the Client in respect of the infringement of Intellectual Property Rights of any third party and losses suffered by the Client as a result.

12. HARDWARE AND THIRD PARTY GOODS

12.1. Risk in Goods to be supplied under this Agreement will pass on the actual date of delivery of the Goods to the Client's location,

from which point the Client shall be responsible for insuring the Goods for their full replacement value.

12.2. Ownership of the Goods will not pass until RedSky IT has received in full all sums due.

12.3. Until ownership of the Goods has passed, the Client shall:

12.3.1. hold the Goods on a fiduciary basis on behalf of RedSky IT; and

12.3.2. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.

12.4. The Client grants RedSky IT and its authorised representatives an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect the same, or, where the Client's right to possession has terminated, to recover them.

13. WARRANTY

13.1. RedSky IT warrants that the Software shall, for a period of sixty (60) days following delivery:-

13.1.1. perform materially in accordance with the documentation for the Software applicable at the date of installation, and

13.1.2. to the extent that Client specific modifications for bespoke work have been supplied and the Client's requirements have been specified and agreed separately, perform materially in accordance with such agreed specification.

13.2. RedSky IT warrants that it is the beneficial owner of, and has full right to, title and interest in the Software.

13.3. RedSky IT will not be liable for a breach of the Software warranties if the error or failure in question has been caused or contributed to by:

13.3.1. a modification, variation or addition to the RedSky IT Software not performed by RedSky IT;

13.3.2. use otherwise than in accordance with this Agreement;

13.3.3. incorrect use or abuse;

13.3.4. the use by the Client of other than the current version(s) of the Software; or

13.3.5. use of the Software with other software or on equipment with which it is incompatible.

13.4. RedSky IT shall use its reasonable endeavours to pass to the Client any warranty given by a Third Party Software proprietor or hardware manufacturer, subject to the Client's agreement to the Third Party Additional Terms, but shall have no other responsibility in respect of such Third Party Software or hardware (and for the sake of clarity the warranty given in clause 13.1 shall not apply to Third Party Software.

13.5. RedSky IT shall furthermore have no liability for a breach of warranty if:

13.5.1. in the circumstances set out in clause 4.99; or

13.5.2. Fees are not paid on the due date for payment in accordance with the terms of the Agreement; or

13.5.3. the Client fails to notify RedSky IT within thirty (30) days of delivery where the breach of warranty in question should have been apparent upon reasonable inspection; or

13.5.4. the Client fails to notify RedSky IT on the earlier of seven (7) days after the date upon which the defect could reasonably have become known to the Client, or seven (7) days of the expiry of the warranty, where it is not one which would have been apparent on reasonable inspection.

13.6. If the Client makes a valid claim based on a failure by RedSky IT to comply with the warranties then RedSky IT will, at its sole option, either:

13.6.1. take such steps as it deems necessary to remedy such failure; or

13.6.2. replace the item (or defective part of the same) with Software or equipment conforming to the warranties and the balance of the warranty given under clause 13.1 in relation to the original product shall apply to the replacement product.

13.7. If RedSky IT complies with clause 13.6 above, then it will have no further liability for a breach of warranty.

13.8. Software in general is not error-free and the Client agrees that the existence of errors in the Software shall not constitute a breach of this Agreement.

13.9. Except for bespoke Software, the Software has not been prepared to meet the Client's individual requirements. It is therefore the Client's responsibility to ensure that the facilities and functions of the Software meets its requirements. In particular, the Client accepts that RedSky IT has no control over the quality of the Client's data and proposed application of the results.

13.10. RedSky IT does not warrant that the operation of the Software will be uninterrupted or error free.

13.11. RedSky IT shall use reasonable endeavours to check the Software for the most commonly known viruses prior to delivery. However, the Client is solely responsible for virus scanning the Software and accordingly RedSky IT gives no warranty that the Software will be free from viruses and accepts no liability for any losses (including loss of data including Client Data) suffered by the Client as a result of a virus in the Software.

14. LIABILITY

14.1. Save as specifically referred to elsewhere in this Agreement, the provisions of this clause 14 sets out the entire liability of RedSky IT (including any liability for the acts or omissions of its consultants, employees, agents and authorised representatives) to the Client in respect of:-

14.1.1. any breach of this Agreement; and/or

14.1.2. any negligent misrepresentation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.

14.2. Without prejudice to clause 14.4 and subject to clause 14.5, the total liability of RedSky IT for any claim for loss or damage made by the Client against RedSky IT whether in contract or in tort (including negligence or breach of statutory duty on the part of RedSky IT), arising in connection with the performance or contemplated performance of this Agreement will not exceed:

14.2.1. if in respect of IT support in connection with the Software, 100% of the ALF payable for the year in which the loss or damage occurred, and

14.2.2. in respect of any of the Goods 100% of the proportion of the Fees payable in respect of those Goods

14.2.3. in all other circumstances, 100% of the ILF paid by the Client in relation to the Software provided.

14.3. All warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

14.4. Nothing in this Agreement excludes or limits the liability of RedSky IT for death or personal injury caused by the negligence of RedSky IT or for fraud.

14.5. RedSky IT will not be liable to the Client in contract, tort, misrepresentation or otherwise (including negligence), for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, or for any loss of profit, loss of business, loss of data, depletion of goodwill or otherwise (whether direct or indirect), and whether or

not caused by the negligence of RedSky IT or its employees, agents or authorised representatives, which arises out of or in connection with this Agreement.

14.6. RedSky IT will not be liable under or in connection with this Agreement for a failure to meet any contractual obligation which results from a breach of this Agreement by the Client or default (including negligence) of the Client or any agent or subcontractor of the Client.

15. FORCE MAJEURE

15.1. Neither party is under any liability to the other party in respect of anything which apart from this provision would constitute a breach of this Agreement and which arises by reason of force majeure. **Force majeure** means, in relation to either party, circumstances beyond its reasonable control and includes acts of God, acts of any governmental or supra-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), failure of the internet or third party networks or systems, restraints or delays affecting shipping or carriers, an inability or delay in obtaining supplies of adequate or suitable materials and currency restrictions.

15.2. If the force majeure event prevails for a continuous period of more than three (3) months or a total of four (4) months in any twelve (12) month period, the party not affected by the force majeure event may terminate this agreement by giving fourteen (14) days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

16. TERMINATION

16.1. The rights of termination set out in this clause 16 are without prejudice to any and in addition to any rights of termination set out elsewhere in this Agreement:

16.2. RedSky IT may terminate this Agreement with immediate effect by notice in writing to the Client if the Client fails to pay to RedSky IT any sum due under this Agreement on the due date for payment.

16.3. Either party may terminate this Agreement with immediate effect by notice in writing to the other if the other is in material breach of this Agreement and has failed (where the breach is capable of remedy) to remedy the breach within thirty (30) days of the receipt of a request in writing to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

16.4. RedSky IT may suspend access to and use of all or part of the Software immediately and without notice in the event that the Client breaches or RedSky IT acting reasonably suspects that the Client has committed a material breach of any term of this Agreement.

16.5. Either party may terminate this Agreement with immediate effect by notice in writing to the other if the other becomes subject to any of the events listed in clause 16.5.1, as applicable, or either party reasonably believes that the other is about to become subject to any of them and notifies the other party accordingly. In addition, if any of the events listed in clause 16.5.1 occur to the Client, without limiting any other right or remedy available to RedSky IT under this Agreement, RedSky IT may suspend all further provision of Software or work under this Agreement or under any other agreement between the Client and RedSky IT without incurring any liability to the Client, and all outstanding sums due from the Client to RedSky IT shall become immediately due.

16.5.1. For the purposes of clause 16.35, the relevant events are:

(a) becomes insolvent or makes a composition or arrangement with its creditors;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the Court" did not appear in section 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or having no reasonable prospect of so doing, in either case, within the

meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom the forgoing applies.

(c) either party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where these events take place for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of either party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of either party, other than for the sole purpose of a scheme for a solvent amalgamation of the party with one or more other companies or the solvent reconstruction of that party;

(e) (being an individual) the Client is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of either party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the party;

(h) a floating charge holder over either party's assets has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over either party's assets or a receiver is appointed over either party's assets;

(j) any event occurs, or proceeding is taken, with respect to either party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses (a) to (i) (inclusive); or

(k) being an individual) the Client dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

16.5.2. Where the Client becomes subject to any of the events listed in clause 16.5.1 and has not paid the ALF for that contact year in full (and without prejudice to its liability to do so), the Client shall pay to Redsky IT a Fee for each day the Agreement remains in force thereafter at a rate 1/365 of the ALF per day (to be offset against the unpaid ALF) which the Client shall pay in weekly instalments on the 7th day of each week ("Weekly Fee") . In the event that the Client fails to make payment of any Weekly Fee within 48 hours of receiving notice from Redsky IT demanding payment, Redsky IT shall be entitled to terminate the Agreement or prevent further use of the Software by the Client by such means as it chooses. If the Agreement is terminated or the Client is prevented from further use of the Software under this clause, RedSky IT will, at the written request of the Client, provide a quote (priced at Redsky IT's sole discretion) for the following services, which will be delivered by Redsky IT upon payment in full in advance by the Client of the amount quoted:

(a) Provision of a copy of the stored data held within the licenced Software environment, constituting a complete copy of the transactional data held, to the Client or their duly appointed representatives. The copy of the stored data can be exported to a third-party database for further processing;

(b) Grant of a new software licence, containing the same restrictions as Sub-clauses 9.4, 9.4 and Sub-clauses 9.7 to 9.10 and subject to these Term and Conditions, using the data within the former structure to be provided with either read only or ongoing processing capability. The provision of such licence will be subject to payment of a fee based upon users and length of duration. Supply will be subject to written approval by the client's owners or representatives.

16.5.3. Without prejudice to any other right or remedy available to RedSky IT, and provided always that Redsky IT has not terminated the Agreement, where the Client becomes subject to any of the events listed in clause 16.5.1 it shall be a condition of it continuing to supply the Software and any related services to the Client that any insolvency officer appointed shall provide a personal guarantee, guaranteeing the payment of all future charges in respect of the licensing and supply of the Software and services to the Client. Failure by the insolvency officer to provide such a guarantee within fourteen (14) days of the event listed in clause 16.5.1 occurring shall entitle Redsky IT to terminate the Agreement under clause 16.55.

16.5.4. Termination of this Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of this Agreement shall continue in full force and effect.

16.6. In addition to any right of termination set out specifically elsewhere in the Agreement, RedSky IT may terminate this Agreement with immediate effect by the service of written notice on the Client if the Client has failed to pay any Fees due to RedSky IT by the due date for payment.

17. CONSEQUENCES OF TERMINATION

17.1. Upon termination of this Agreement for whatever reason, the Client shall:-

17.1.1. immediately pay to RedSky IT all unpaid invoices (whether or not due) raised by RedSky IT pursuant to this Agreement; and

17.1.2. pay all costs and expenses, including legal and other fees incurred and all arrears of fees, charges or other payments arising in respect of the Software or under this Agreement; and

17.1.3. pay for all work in progress not previously paid for on a reasonable pro-rata basis (subject to receipt of an invoice for the same from RedSky IT).

17.2. Save where the Agreement is terminated with immediate effect (in which case the licence to use the Software shall shall cease immediately), the License to use the Software shall be cancelled at the next ALF anniversary or the subsequent ALF anniversary if termination occurs within 3 months of the anniversary.

17.3. RedSky IT shall not be obliged upon termination of this Agreement to make any refund to the Client of any Fees paid in advance.

17.4. Termination of this Agreement is without prejudice to the rights and duties of either party accrued prior to termination.

17.5. Clauses of this Agreement which expressly or by implication survive termination or have effect on or after termination will continue to be enforceable notwithstanding termination.

18. DISPUTE RESOLUTION

18.1. Any dispute or difference (a **Dispute**) between RedSky IT and the Client in respect of or arising out of this Agreement will be dealt with in accordance with this clause 18.

18.2. In the first instance, a representative of each party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives, it will be referred to a senior representative of each party, who shall each use their respective reasonable endeavours to resolve the Dispute.

18.3. If a Dispute cannot be resolved by negotiation as referred to in clause 18.2 within thirty (30) days of the Dispute arising, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR.

18.4. If the Dispute is not resolved within ninety (90) days of the initiation of the mediation, or if either Party will not participate in the mediation, either Party may commence proceedings.

18.5. The dispute resolution procedure in this clause 18 shall not impose any precondition on any Party, or otherwise prevent or delay any Party from commencing court proceedings in any court or competent jurisdiction to obtain an order (whether interlocutory, interim or final injunctive relief) restraining the other Party from doing any act.

19. RIGHT OF AUDIT

19.1. RedSky IT will be entitled to enter onto the Client's premises, or to dial in and access during Business Hours, and upon forty eight (48) hours' notice, in order to verify that the Client is complying with its obligations under this Agreement. RedSky IT may in connection with such right be entitled to inspect documents and to take copies of the same. The Client shall provide RedSky IT with all reasonable assistance that RedSky IT may require in order for it to properly audit the Client's compliance with the Agreement.

20. NON-SOLICITATION

20.1. Neither party shall during the continuance of this Agreement and a period of twelve (12) months following its termination solicit or entice, or endeavour to solicit or entice, away from the other party, or employ or offer employment to any person employed in connection with this Agreement.

20.2. In the event that a RedSky IT employee does take up an offer with the Client, then liquidated damages will be payable to RedSky IT at no less than 50% of their annual salary.

20.3. Where a RedSky IT employee leaves RedSky IT, joins the Client and in the intervening time does not take up full time employment, then clause 20.2 applies.

20.4. The Parties agree that the figures set out in clause 20.2 represent a genuine pre-estimate of the loss incurred.

21. PUBLICITY

21.1. RedSky IT shall be entitled to refer to the Client as a customer of RedSky IT and having received IT systems and services from RedSky IT on its website and in any publicity or other materials from time to time produced by it.

22. SEVERABILITY

22.1. The illegality, invalidity or unenforceability of any provision of this Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

23. WAIVER

23.1. The failure or delay of either party to exercise any right, power or remedy under this Agreement will not in any circumstances impair such right, power or remedy or operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

23.2. A waiver by either party of a breach is not deemed a waiver of any subsequent breach or default and in no way affects the other provisions of this Agreement.

24. ASSIGNMENT AND SUBCONTRACTING

24.1. The Client may not assign the benefit or delegate the burden of this Agreement or sub-license any of its rights under this Agreement (including to any Associated Company) without the prior written consent of RedSky IT.

24.2. RedSky IT may sub-contract or assign any or all of its rights and obligations under this Agreement.

25. AMENDMENTS

No variation or amendment to this Agreement is effective unless agreed in writing, signed by both parties, and appended to this Agreement.

26. NOTICES

26.1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

26.1.1. Delivered by hand or by pre-paid first class post or other next working day delivery service to the other party at its address set out in this Agreement or such other address as may have been notified by that party for such purposes; or

26.1.2. Sent by email to the address specified in this Agreement or such other email address as may have been notified by that party for such purposes;

26.2. Any notice shall be deemed to have been received:

26.2.1. If delivered by hand, at the time the notice is left at the proper address;

26.2.2. If sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business Day after posting;

26.2.3. If sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt when business hours resume. In this clause 26.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

27. APPLICABLE LAW AND JURISDICTION

27.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

28. INTERPRETATION

28.1. The headings used in this Agreement are inserted for convenience only and are intended neither to be part of nor to affect the meaning or interpretation of any provision of this Agreement.

28.2. In this Agreement the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context admits or requires.

28.3. The expression **person** means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.

28.4. The words **include**, **includes**, **including** and **included** will be construed without limitation unless inconsistent with the context.

28.5. This Agreement constitutes the entire agreement between RedSky IT and the Client as to the subject matter of this Agreement and supersedes all previous communications, representations and arrangements, either written or oral. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise between the parties in connection with the subject matter of this Agreement except as expressly set out in this Agreement. Neither party has relied or is relying upon any other information, discussion or understanding in entering into this Agreement and any representations made prior to this Agreement which are not expressly incorporated in it are withdrawn and shall have no legal effect whatsoever. Consequently, neither party shall be liable for any negligent misrepresentation in

relation to any such prior representations and the Client irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation, condition or warranty not contained in this Agreement and/or to rescind this Agreement, unless the misrepresentation, condition or warranty was made fraudulently.

SCHEDULE

Quantity	Description	Price
Total Excl VAT		

Payment Terms:
Expenses will be recharged at cost as incurred and mileage is charged at 52p per mile.
All payments and signed original sales agreements to be sent to the address above.

Customer Approval	RedSky IT Approval
Authorised Signature:	**Authorised Signature:**
Name:	**Name:**
Title:	**Title:**
Date:	**Date:**
	Internal Reference: